IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

MFA.No. 884 of 2000(B)

OA.34/1997 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS/ RESPONDENTS IN THE OA.
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1. **THE STATE OF KERALA, REP.BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE CUSTODIAN OF VESTED FORESTS, ARANYA BHAVAN FOREET COMPLEX, OLAVAKKOD, PALAKKAD 2.**

BY GOVERNMENT PLEADER SRI.M.P.PRAKASH

RESPONDENTS: APPLICANTS IN THE OA.
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1. **KUNJAPPA. S/O. IDUMBAN, PERIKKALLIL, PAZHAMBALAKKODE ALATHUR TALUK, PALAKKAD.**

2. **VIJAYAKUMAR, S/O.IDUMBAN, -DO- -DO-**

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A NO.884/2000

ORDER ON CMP. NO.4978/2000 IN MFA. 884/2000

DISMISSED

10.08.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- V.GIRI, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.884 of 2000 B

Dated this the 10th day of August, 2007.

JUDGMENT

Koshy, J.

The respondents herein filed an application before the Forest Tribunal, when their alleged peaceful possession of 2 acres of land was interfered with by the Forest Officials, contending that it is not a vested forest in view of Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act, 1971 {for short '**the Act**}. According to the respondents, the plaint scheduled property is not a private forest at all and even if it is a private forest, they are entitled to the benefits of Sections 3(2) and 3(3) of the Act.

2. It is the contention of the appellants that it is part of 718.04 hectares of Choolannur Malavaram, Bit No.1 attracting the provisions of the Madras Preservation of Private Forests Act, 1949 {for short '**the M.P.P.F.Act, 1949**"}. It is also pointed out that the claimants have not proved that they have got title to the property. It is further contended that it was not proved that the property was cultivated so as to claim exemption under Section 3(2) or 3(3) of the Act.

3. It is true that if the land is a private forest as on the relevant date, it will automatically vest in the Government in view of Section 3(1) of the Act. It is the contention of the appellants that it is private forest because it is covered by the provisions of the M.P.P.F.Act, 1949. Under the the M.P.P.F.Act, 1949, 'forest' is defined in section 2(a), which reads as follows:

> **" (a) 'forest' includes waste or communal land containing trees and shrubs, pasture land and any other class of land declared by the (State) Government to be a forest by notification in the [Kerala Government Gazette]"**

4. It was specifically contended by the respondents that it is not covered by the M.P.P.F.Act, 1949 and there is no notification published declaring it as a 'forest' for the purpose of MPPF Act. The tribunal has considered the matter in detail. The Forest Range Officer, who was examined, stated that no documents are available to show that the land in question is covered under the M.P.P.F.Act, 1949 and even if the land is covered under the M.P.P.F.Act, 1949, under Section 2 (f) (1) A, B and C, lands which are actually cultivated are excluded, under the definition of 'private forest' in the Act. The Forest Range Officer, who was examined as RW.1, in his deposition, has no dispute

regarding the identity of the property or boundaries. The Commissioner has identified the property. He has reported that the plaint scheduled property was surrounded by private lands and the commission report also shows that the land is having cashew trees having the age of 10 to 15 years and a tamarind tree aged 7 years, whereas 2 or 3 forest trees found there were having 3 to 5 years, at the time of inspection. That means, as on the relevant date (10.5.1971), there were no forest trees in the area in question. Considering the overall evidence, the tribunal found that the area in question was not a private forest, as defined under the Act. On the basis of evidence, it is also found that the petition scheduled property was a cultivated land on the date on which the Act came into force. Therefore, the question of automatic vesting under Section 3(1) of the Act will not arise. With regard to the identify of the land, there is no dispute.

5. It is submitted that the respondents/claimants have established their title by producing Exts.A1 and A2 partition deeds executed much prior to the Act. Ext.A2 is dated 1.12.1947 and Ext.A1 is dated 1.12.1970. The extent of the land and the survey numbers were explained by the commissioner in the report and

apart from the above, there is no evidence to show that in the identified property, there are no forest trees during the relevant time. If the area in question is not a private forest, there is no jurisdiction for the Forest Officials as the property is not vested with the appellants herein. The question of title of the claimants need not be gone into in detail to consider whether the claimants are entitled to exemption under Section 3(3) of the Act. Only if the property is vested under Section 3(1) as a private forest, the question of exemption need be considered. Since the plaint scheduled property is not a private forest, the tribunal has correctly found that it is not a vested forest.

We are of the view that the findings of the tribunal is based on evidence and there is no need to interfere. Appeal fails, dismissed.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

sk/

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J.B.KOSHY & V.GIRI, JJ.

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M.F.A.No.884 of 2000

JUDGMENT

10th August, 2007.